

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ALARIC F. SIMON,

Case No. 3:-05-CV-191

Plaintiff,

-vs-

Judge Thomas M. Rose

**MIAMI COUNTY INCARCERATION
FACILITY, et al.,**

Chief Magistrate Judge Michael R. Merz

Defendants.

**ENTRY AND ORDER OVERRULING SIMON'S OBJECTIONS (Doc. #69)
TO THE CHIEF MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS REGARDING THE MIAMI COUNTY
DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY
JUDGMENT (Doc. #59) AND ADOPTING THE CHIEF MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS REGARDING THE
MIAMI COUNTY DEFENDANTS' MOTION TO DISMISS OR FOR
SUMMARY JUDGMENT IN ITS ENTIRETY**

This matter is before the Court pursuant to Alaric F. Simon's ("Simon's") objections to the Report and Recommendations on the Miami County Defendants' Motion To Dismiss Or for Summary Judgment. Simon sought an extension of time to file objections which was granted to and including April 3, 2006. Simon did not file objections within this time. However, on April 30, 2006, Simon filed a document captioned "Motion To Alter or Amend the Judgment Under F.R.C.P. Rule 59(e)." (Doc. 69.) Since Simon's document captioned as a Motion To Alter or Amend refers to the Miami County Defendants' Motion To Dismiss Or for Summary Judgment, and, since there is no order pending that would warrant a Rule 59(e) Motion, Simon's Motion To Alter or Amend will be considered to be objections to the Report and Recommendations regarding the Miami County Defendants' Motion To Dismiss Or for Summary Judgment.

However, Simon was granted an extension only to April 3, 2006, to file objections and the objections set forth in his Motion To Alter or Amend were not filed until April 30, 2006.

The District Judge has made a de novo review of the record on this issue pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that the Objections are not well-taken and they are hereby **OVERRULED**. The Chief Magistrate Judge's Report and Recommendations regarding the Miami County Defendants' Motion To Dismiss Or for Summary Judgment is **ADOPTED** in its entirety.

Simon was notified by the Court of the Rule 56 evidentiary requirements and has failed to establish that there are any genuine issues of material fact because he has not offered any Rule 56 evidence in support of his factual allegations. Simon's Objections are both untimely and without merit and are, therefore, **OVERRULED**. Because the Miami County Defendants' Motion To Dismiss Or for Summary Judgment relies upon matters outside the pleadings, it is treated as a Motion for Summary Judgment, and the Miami County Defendants' Motion for Summary Judgment is **GRANTED**.

DONE and ORDERED in Dayton, Ohio, this Eighteenth day of May, 2006.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Alaric F. Simon